

APPEAL NO. 020293
FILED MARCH 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 10, 2002. The hearing officer determined that the respondent's (claimant) compensable injury sustained on _____, includes an injury to the right shoulder and that the claimant's average weekly wage (AWW) is \$306.26. The appellant (carrier) has appealed the extent-of-injury determination, contending it is against the great weight and preponderance of the evidence. There is no response from the claimant contained in our file.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury, and that the AWW is \$306.26. The claimant testified that she was injured while taking inventory at work when a box of bed sheets fell 20 feet onto her head, neck and shoulders; that she was taken to the hospital for x-rays; that she was prescribed medication and told to go home and rest; and that she continued to have pain to her right shoulder after she was released from the hospital. An MRI reflects "[t]here is evidence of either partial tear or tendonosis at the intersertion of the supraspinatus tendon." The carrier contends that the claimant's shoulder condition is merely degenerative and that she did not complain of shoulder pain until much later.

The claimant had the burden to prove by a preponderance of the evidence that her compensable injury of _____, extends to and includes an injury to the right shoulder. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer is the sole judge of the relevance and materiality of the evidence, as well as of the weight and credibility of the evidence. As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We are satisfied that the challenged determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY
SUITE 1200
DALLAS, TEXAS 75243.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge